IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

RPFC.No. 29 of 2007()

MC.125/2006 of FAMILY COURT, MALAPPURAM.
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REVISION PETITIONER/RESPONDENT:

T.S. ABDUL KHADER,S/O.SAITHU MUHAMMED,
THALAPPALLIYIL HOUSE, MONGAM, MORAYOOR,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: PETITIONERS:
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1. ARAKKAL VAHEEDA, D/O.MUHAMMED,
ARAKKAL HOUSE, KALLIDIMBU, EDAVANNA P.O.,
MALAPPURAM DISTRICT.

2. DANISH - MINOR,
REPRESENTED BY HIS MOTHER - GUARDIAN,
THE FIRST RESPONDENT.

3. KAMILA - MINOR,
REPRESENTED BY HER MOTHER - GUARDIAN,
THE FIRST RESPONDENT.

BY ADV. SRI.T.K.AJITH KUMAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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R.P(F.C) NO. 29 OF 2007

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Dated this the 17th day of October, 2007.

ORDER

The revision petitioner, who is the husband of the 1st respondent and father of respondents 2 and 3, was the counter petitioner in M.C. No. 131/2001 filed under Section 125 Cr.P.C by the respondents claiming maintenance on behalf of respondents 2 and 3. As per order dated 30.09.2002, the Family Court ordered monthly allowance at the rate of Rs.300/- each to respondents 2 and 3. Subsequently, a petition under Section 127 Cr.P.C was filed as M.C. 205/2004 claiming enhanced amount. As per order dated 09.08.2004, the Family Court enhanced the monthly maintenance to Rs.500/- each to respondents 2 and 3. It is thereafter that the present application namely M.C. No.125/2006 was filed on 27.02.2006 claiming further enhancement in favour of the respondents 2 and 3. Even though the revision petitioner had filed his objections to the same and had appeared during the initial postings of the case, he thereafter

made himself scarce and remained absent. His defence was then struck off. On the basis of the proof affidavit filed on behalf of the respondents, the learned Magistrate as per the impugned order dated 16.11.2006 further enhanced the monthly maintenance to Rs.900/- each to respondents 2 and 3.

2. While admitting this revision, this Court had directed the revision petitioner to deposit entire arrears of maintenance within one month from 24.01.2007. It is agreed that the said amount has been deposited and the respondents have withdrawn the amount also.

3. The impugned order refers to discontinuance of payment of interim maintenance by the revision petitioner pending M.C. No. 125/2006. It is not known whether the entire maintenance was claimed by means of separate petition or not. Section 127 does not contemplate payment of any interim maintenance. Similarly, there is no power in the Family Court to strike off the defence of a respondent who remains absent

4. In the fitness of things, I am of the view that the revision petitioner should be given an opportunity to contest the

application-M.C. No. 125/2006 especially when he had filed his counter and had also paid interim maintenance (though without any enabling provision), during the initial stage. Accordingly, the impugned order is set aside and the petitioner is given an opportunity to cross-examine the deponent of the proof affidavit and also to adduce such further evidence which he might think fit in rebuttal. But, the revision petitioner will be entitled to contest the proceedings only if he continues to pay maintenance as ordered as per the order dated 09.08.2004 in M.C. No.205/2004. The party shall appear before the court below without any further notice on **19.11.2007.** The Family Court shall endeavour to dispose of the matter expeditiously and at any rate within three months of 19.11.2007.

The R.P.(F.C.) is disposed of as above.

V. RAMKUMAR, JUDGE.

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